

AMENDED IN ASSEMBLY AUGUST 14, 2006

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY JUNE 20, 2005

## SENATE BILL

**No. 263**

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### Introduced by Senator Speier

February 15, 2005

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An act to amend Sections 17550.1, 17550.13, 17550.14, 17550.17, 17550.21, 17550.37, and 17550.38 of, and to add Sections 17550.195 and ~~17550.26~~ , ~~17550.26~~, and ~~17550.27~~ to, the Business and Professions Code, relating to sellers of travel.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 263, as amended, Speier. Sellers of travel: regulation.

(1) Existing law regulates sellers of travel, as defined, and requires their registration with the Attorney General. Under existing law, a violation of those provisions is a crime, and certain violations are punishable as a felony ~~offense~~.

This bill would revise the definition of seller of travel to include sellers of land or water vessel transportation, as specified. The bill would also revise regulatory requirements pertaining to disclosure and refund obligations of a seller of travel. The bill would allow a seller of travel, in lieu of a registration renewal, to file an attestation that no change has occurred to the information provided in its last filed complete registration statement. Because the attestation is made under penalty of perjury, the bill would impose a state-mandated local program by ~~creating a criminally punishable offense~~ *expanding the crime of perjury*. The bill would ~~also prohibit a seller of travel from selling future transportation or other travel services, as specified, at a~~

~~discounted price or on a preferential basis~~ *person from selling a travel business discount program, as defined, unless specified requirements are met. The bill would also prohibit a seller, as defined, from selling a seller of travel discount program, as defined, unless specified requirements are satisfied.* Because ~~the~~ a violation of this prohibition these provisions would be a crime under the seller of travel regulatory provisions, the bill would impose a state-mandated local program. The bill would require the Attorney General to suspend the registration of a person convicted of a felony violation of the provisions regulating sellers of travel and would also prohibit the person from registering as a seller of travel and from participating in the Travel Consumer Restitution Fund for 7 years.

(2) Existing law provides for the Travel Consumer Restitution Corporation that is required to provide restitution for a claim filed by a person aggrieved, defined as a person meeting certain conditions who has sustained a loss because a seller of travel failed to refund payments for travel services that were not provided to the person. Under existing law, this restitution is secondary to any other compensation or reimbursement to which the person aggrieved is entitled.

This bill would specify that the restitution provided by the Travel Consumer Restitution Corporation is secondary only to specified sources of compensation or relief to which the person aggrieved may be entitled.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17550.1 of the Business and
- 2 Professions Code is amended to read:
- 3 17550.1. (a) "Seller of travel" means a person who sells,
- 4 provides, furnishes, contracts for, arranges, or advertises that he

1 or she can or may arrange, or has arranged, wholesale or retail ,  
2 either of the following:

3 (1) Air or sea transportation either separately or in conjunction  
4 with other travel services.

5 (2) Land or water vessel transportation, other than sea  
6 carriage, either separately or in conjunction with other travel  
7 services if the total charge to the passenger exceeds three  
8 hundred dollars (\$300).

9 (b) Seller of travel does not include any of the following:

10 (1) An air carrier.

11 (2) An ocean carrier.

12 (3) A hotel, motel, or similar lodging establishment where in  
13 the course of selling, providing, furnishing, contracting for, or  
14 arranging transient lodging accommodations and related services  
15 for its registered guests, it also arranges for transportation and  
16 does not directly or indirectly receive any money or other  
17 valuable consideration for arranging or providing that  
18 transportation.

19 (4) A person or organization certified under Part 5  
20 (commencing with Section 12140) of Division 2 of the Insurance  
21 Code, except such a person or organization shall comply with the  
22 registration and fee provisions of Sections 17550.20 and  
23 17550.21 for each location at which air or sea transportation is  
24 sold either separately or in conjunction with other travel services.

25 (5) A motor or rail carrier or water vessel operator holding the  
26 required permit, license, or other authority to operate from a  
27 state, federal, or other governmental entity.

28 (c) Notwithstanding any other provision of law, a reference in  
29 this article or Article 2.7 (commencing with Section 17550.35) to  
30 air or sea transportation or to an air or sea carrier, includes land  
31 or water vessel transportation, as described in subdivision (a),  
32 and a motor carrier or water vessel operator.

33 SEC. 2. Section 17550.13 of the Business and Professions  
34 Code is amended to read:

35 17550.13. (a) (1) A seller of travel shall not receive any  
36 money or other valuable consideration in payment for air or sea  
37 transportation or other travel services offered by the seller of  
38 travel unless at the time of or prior to the receipt of payment, the  
39 seller of travel first furnishes to the person making that payment

1 written materials conspicuously setting forth the following  
2 information:

3 (A) The name and business address and telephone number of  
4 the seller of travel.

5 (B) The total amount to be paid by or on behalf of the  
6 passenger, amount paid to date, the date of any future payment,  
7 the purpose of the payment made, and an itemized statement of  
8 the balance due, if any.

9 (C) The name of the provider of the air or sea transportation,  
10 and the date, time, and place of each departure, or the  
11 circumstances under which the date, time, and place of departure  
12 will be determined.

13 (D) All terms and conditions relating to the air or sea  
14 transportation or travel services being purchased by the  
15 passenger, including cancellation conditions. An air carrier's or  
16 an ocean carrier's standard contract of carriage is not required to  
17 be disclosed prior to the seller of travel receiving any money or  
18 other valuable consideration.

19 (E) A clear and conspicuous statement that upon cancellation  
20 of the transportation or travel services, where the passenger is not  
21 at fault and has not canceled in violation of any terms and  
22 conditions previously clearly and conspicuously disclosed to and  
23 agreed to by the passenger, all sums paid to the seller of travel  
24 for services not provided will be promptly paid to the passenger,  
25 unless the passenger otherwise advises the seller of travel in  
26 writing, after cancellation.

27 (F) If the seller of travel is required by this article to have a  
28 trust account or bond, a clear and conspicuous disclosure stating:  
29 "California law requires certain sellers of travel to have a trust  
30 account or bond. This business has [a trust account] or [a bond  
31 issued by (company) in the amount of (\$X)]."

32 (G) If the seller of travel is a participant in the Travel  
33 Consumer Restitution Fund and the passenger, or the person  
34 making payment for the passenger, was located in California at  
35 the time of the sale of air or sea transportation or travel services,  
36 a clear and conspicuous notice of the right of the passenger, or  
37 the right of the person making payment for the passenger, to  
38 make a claim on that fund. The notice shall include a description  
39 of the losses covered, the method for making a claim, the time

1 limit within which the claim shall be made, and the amount  
2 which may be claimed.

3 (H) If the seller of travel is a participant in a Consumer  
4 Protection Deposit Plan that meets the criteria set forth in  
5 subdivision (b) of Section 17550.16, a clear and conspicuous  
6 notice of the passenger's right to make a claim on the plan. That  
7 notice shall include a description of the losses covered, the  
8 method for making a claim, the time limit within which the claim  
9 shall be made, and the amount that may be claimed.

10 (I) If the seller of travel is a participant in a Consumer  
11 Protection Escrow Plan that meets the criteria set forth in  
12 subdivision (c) of Section 17550.16, a clear and conspicuous  
13 notice of the passenger's right to make a claim on the plan. That  
14 notice shall include a description of the losses covered, the  
15 method for making a claim, the time limit within which the claim  
16 shall be made, and the amount that may be claimed.

17 (J) If the seller of travel is not a participant, a clear and  
18 conspicuous disclosure that the seller of travel is not a participant  
19 in the Travel Consumer Restitution Fund. That disclosure shall  
20 be made both orally and in writing.

21 (K) If the seller of travel is a participant in the Travel  
22 Consumer Restitution Fund and the passenger or any person who  
23 made a payment on behalf of the passenger for travel services is  
24 located ~~inside~~ in California, a clear and conspicuous disclosure  
25 made both orally and in writing that the transaction is covered by  
26 the Travel Consumer Restitution Fund.

27 (2) There is no violation of this subdivision if both of the  
28 following occur:

29 (A) Compliance was rendered impossible as a direct result of  
30 an unforeseen condition beyond the control of the seller of travel.

31 (B) The seller of travel obtains from each passenger, written  
32 acknowledgment that the passenger has not received disclosure  
33 of the terms and conditions required by this section.

34 (b) If a seller of travel offers, sells, provides, or distributes a  
35 travel certificate as defined in Section 17550.10 and any  
36 passenger payment is nonrefundable, in whole or in part, the  
37 seller of travel shall obtain the written acknowledgment of that  
38 limitation from the end user prior to, or at the time of, receipt of  
39 any money or other valuable consideration.

(c) Notwithstanding any other provision of this section, if money or other valuable consideration is received from a customer to whom the seller of travel has sold air or sea transportation within the preceding 12 months and the disclosures required by this section are substantially the same as the disclosures given in connection with the prior travel, the disclosures required by this section shall be made within five days of receipt of that money or other valuable consideration.

(d) Notwithstanding any other provision of this section, if money or other valuable consideration is received in payment for air transportation and the seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation and forwards the amount paid, without offsetting or reducing the amount forwarded by any amounts due or claimed in connection with any other transaction, to the airline providing the transportation or to the Airlines Reporting Corporation, the disclosures required by this section with respect to that air transportation may be made orally.

SEC. 3. Section 17550.14 of the Business and Professions Code is amended to read:

17550.14. (a) The seller of travel has an obligation either to provide the air or sea transportation or travel services purchased by the passenger or to make a refund as provided by this section. The seller of travel shall return to the passenger all moneys paid for air or sea transportation or travel services not actually provided to the passenger, within either of the following periods, whichever is earlier:

(1) Thirty days from one of the following dates:

(A) The scheduled date of departure.

(B) The day the passenger requests a refund.

(C) The day of cancellation by the seller of travel.

(2) Three days from the day the seller of travel is first unable to provide the air or sea transportation or travel services.

As used in this section, “unable to provide” includes, but is not limited to, any day on which the passenger’s funds are not in the trust account required by Section 17550.15 and subdivision (g) of Section 17550.21 or the funds necessary to provide the passenger’s transportation or travel services have been disbursed other than as allowed by Section 17550.15 or subdivision (a) of Section 17550.16.

(b) If the seller of travel has disbursed the passenger's funds pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) of Section 17550.15 and the disbursement is in full payment for the services or transportation purchased by the passenger, the seller of travel may, instead of providing a refund, provide to the passenger a written statement accompanied by bank records establishing that the passenger's funds were disbursed as required by those provisions and, if disbursed to a seller of travel, proof of current registration of that seller of travel. A seller of travel who is exempt from the requirements of Section 17550.15 pursuant to subdivision (a) of Section 17550.16 and who is in compliance with subdivision (a) of Section 17550.16 may comply with this section by maintaining and providing to the passenger documentary proof of disbursement in compliance with subdivision (a) of Section 17550.16, and proof of current registration of the seller of travel to whom the funds were disbursed, which registration shall note that the registered seller of travel either has a trust account in compliance with Section 17550.15, or is exempt from the requirements of Section 17550.15 pursuant to subdivision (b) or (c) of Section 17550.16. This subdivision does not apply to refunds subject to subdivision (c) or (d).

(c) If terms and conditions relating to a refund upon cancellation by the passenger have been disclosed and agreed to by the passenger and the passenger elects to cancel for any reason other than a seller of travel being unable to provide the air or sea transportation or travel services purchased, the making of a refund in accordance with those terms and conditions shall be deemed to constitute compliance with this section.

(d) Any material misrepresentation by the seller of travel shall be deemed to be a violation of this article and cancellation by the seller of travel, necessitating a refund as required by subdivision (a).

SEC. 4. Section 17550.17 of the Business and Professions Code is amended to read:

17550.17. (a) This section does not apply to sellers of travel who are exempt from the requirements of Section 17550.15 pursuant to Section 17550.16.

(b) Upon payment in full by the passenger for air or sea transportation and any related services with a credit card or with

1 cash, the seller of travel shall issue and deliver the ticket or  
2 voucher to the passenger or his or her designated agent within 72  
3 hours.

4 (c) Upon payment in full by the passenger for air or sea  
5 transportation and any related services with a check, the seller of  
6 travel shall issue and deliver the ticket or voucher to the  
7 passenger or his or her designated agent within 72 hours of the  
8 earlier of the following:

9 (1) The time the passenger's payment is credited to the seller  
10 of travel's account.

11 (2) The expiration of the maximum hold period specified in  
12 Section 10.190405 of Title 10 of the California Code of  
13 Regulations.

14 (d) Tickets, vouchers, or receipts shall be deemed to have been  
15 delivered if they have been turned over to an independent  
16 third-party delivery service or the United States Postal Service  
17 for regular delivery.

18 (e) If the seller of travel is unable to issue tickets or vouchers  
19 upon payment as set forth in subdivisions (b) and (c), the seller of  
20 travel may comply with this section by taking either of the  
21 following actions:

22 (1) Timely forwarding to the air or sea carrier or provider of  
23 travel services, the portion of the sum paid by the passenger that  
24 is required by the air or sea carrier or provider of travel services  
25 from the seller of travel in order to provide the transportation or  
26 services purchased by that passenger and sending to the  
27 passenger within five business days of the date of the purchase or  
28 before the date of the passenger's departure, whichever occurs  
29 first, a receipt describing the transportation and services that  
30 were purchased. The seller of travel may not offset or reduce the  
31 amount forwarded by any amounts due or claimed in connection  
32 with any other transaction.

33 (2) Complying with Sections 17550.13, 17550.14, and  
34 17550.15.

35 (f) There is no violation of this section if compliance with this  
36 section was rendered impossible as a direct result of an  
37 unforeseen condition beyond the control of the seller of travel,  
38 and the seller of travel complied with this section or made  
39 restitution to the passenger within 30 days after the transportation  
40 or travel services purchased by the passenger were not provided.

1 (g) For purposes of this section, “72 hours” means three  
2 business days as defined in Section 9 of the Civil Code.

3 SEC. 5. Section 17550.195 is added to the Business and  
4 Professions Code, to read:

5 17550.195. (a) The Attorney General shall immediately  
6 suspend the registration of a seller of travel who has been  
7 convicted of a felony offense pursuant to Section 17550.19.

8 (b) A person who has been convicted of a felony offense  
9 pursuant to Section 17550.19 is prohibited, for a period of seven  
10 years commencing on the date of his or her conviction, from  
11 registering as a seller of travel and from participating in the  
12 Travel Consumer Restitution Fund.

13 SEC. 6. Section 17550.21 of the Business and Professions  
14 Code is amended to read:

15 17550.21. Each filing pursuant to Section 17550.20 shall  
16 contain the following information:

17 (a) The name or names of the seller of travel, including the  
18 name under which the seller of travel is doing or intends to do  
19 business, if different from the name of the seller of travel.

20 (b) The seller of travel’s business form and place of  
21 organization and, if operating under a fictitious business name,  
22 the location where the fictitious name has been registered. If the  
23 seller of travel does business in California from one or more  
24 locations in this state but does not maintain its principal place of  
25 business in this state, the seller of travel shall state whether it  
26 meets the requirements of paragraph (16) of subdivision (e) of  
27 Section 17511.1.

28 (c) The complete street address or addresses of all locations  
29 from which the seller of travel will be conducting business,  
30 including, but not limited to, locations at which telephone calls  
31 will be received from, or made to, passengers or other sellers of  
32 travel. The statement shall designate which location is the  
33 principal place of business.

34 (d) The complete business and residential addresses and  
35 telephone numbers, the driver’s license number and state of  
36 issuance or equivalent personal identification, the social security  
37 number, and the date of birth of each owner and principal of the  
38 seller of travel. “Owner” means a person who owns or controls  
39 10 percent or more of the equity of, or otherwise has claim to 10  
40 percent or more of the net income of, a seller of travel.

1 “Principal” means an owner, an officer of a corporation, a  
2 general partner of a partnership, or a sole proprietor of a sole  
3 proprietorship.

4 (e) A statement as to whether the seller of travel, any owner,  
5 or principal, or any other seller of travel owned or managed by  
6 any owner or principal of the seller of travel, or the seller of  
7 travel itself has had entered against that person or entity any  
8 judgment, including a stipulated judgment, order, made a plea of  
9 nolo contendere, or been convicted of any criminal violation. The  
10 statement shall identify the person, the court or administrative  
11 agency rendering the judgment, order, or conviction, the docket  
12 number of the matter, and the date of the judgment, order, or  
13 conviction; where the judgment, order, or record of conviction is  
14 filed; and the nature of the case or judgment. This subdivision  
15 does not require disclosure of marital dissolution, child support,  
16 or child custody proceedings.

17 (f) A copy of the travel certificates, if any, that are or will be  
18 sold, marketed, or distributed to any person or entity by the seller  
19 of travel.

20 (g) The seller of travel shall file with the Attorney General a  
21 signed and dated statement providing the following:

22 (1) The account number of each trust account required by this  
23 article.

24 (2) The name and address of each financial institution at which  
25 the seller of travel maintains a trust account required by this  
26 article.

27 (3) Any registration number issued to the seller of travel by  
28 the Airline Reporting Corporation or the International  
29 Association of Travel Agents Network.

30 (4) A consent form consenting to the Attorney General, a  
31 district attorney, or their representatives obtaining directly from  
32 the Airlines Reporting Corporation, International Association of  
33 Travel Agents Network, a seller of transportation, provider of  
34 transportation, provider of travel services, and any financial  
35 institution where passenger funds have been deposited, any  
36 information related to an investigation of a seller of travel’s  
37 compliance with this section. The consent form shall be provided  
38 by the Attorney General. If a bond is maintained in lieu of the  
39 trust account, a copy of that bond shall be filed with the Attorney  
40 General.

1 (h) A statement signed by each owner and principal granting  
2 permission to the office of the Attorney General to obtain from  
3 any financial institution or credit union at which any trust  
4 account required by Section 17550.15 is maintained, information  
5 relating to that trust account, as set forth in paragraph (2) of  
6 subdivision (f) of Section 17550.15.

7 (i) The name, address, and telephone number of each person  
8 described in subdivision (g) of Section 17550.20 with whom the  
9 seller of travel contracts.

10 (j) If at the time of registration renewal, no change has  
11 occurred to the information provided in the last filed complete  
12 registration statement and the permission described in  
13 subdivision (h) has not expired, the seller of travel may, instead  
14 of filing a registration statement containing the information  
15 required by subdivisions (a) to (i), inclusive, file a statement  
16 attesting to the continued accuracy of the information in the last  
17 filed complete registration statement. The attestation shall be in a  
18 form specified by the Attorney General and verified as described  
19 in subdivision (k).

20 (k) The information required by this section shall be verified  
21 by a declaration signed and dated by each owner and principal of  
22 the seller of travel, or in the case of a registered seller of travel  
23 that does business in California, from one or more locations in  
24 California, and that meets the requirements of paragraph (16) of  
25 subdivision (e) of Section 17511.1, by a duly authorized officer  
26 of the corporation, under penalty of perjury pursuant to the laws  
27 of the State of California. The declaration shall specify the date  
28 and location of signing. Upon reregistration by a previously  
29 registered seller of travel, the information required by this section  
30 may be verified by the chief executive officer of a corporation,  
31 managing partner of a partnership, or manager of a limited  
32 liability company.

33 ~~SEC. 7. Section 17550.26 is added to the Business and~~  
34 ~~Professions Code, to read:~~

35 ~~17550.26. No seller of travel shall sell a membership or other~~  
36 ~~benefit entitling the purchaser to future travel services at a~~  
37 ~~discount or reduced price or on a preferential basis, if the total~~  
38 ~~consideration for the membership or other benefit exceeds one~~  
39 ~~hundred dollars (\$100) or the duration of the membership or~~  
40 ~~other benefit exceeds one year. Nothing in this section relieves a~~

~~seller of travel from compliance with the requirements for discount buying services pursuant to Title 2.6 (commencing with Section 1812.100) of Part 4 of Division 3 of the Civil Code.~~

SEC. 7. Section 17550.26 is added to the Business and Professions Code, to read:

17550.26. (a) For the purposes of this section, “travel business discount program” means a membership, benefit program, identification card, identifying number, or other arrangement that identifies the purchaser of the travel business discount program as engaged in the travel business or otherwise qualified to receive discounts or reduced prices made available to persons involved in the travel business for transportation or any travel services.

(b) A person may sell a travel business discount program if the following conditions are satisfied:

(1) The represented discounts or reduced prices offered under the travel business discount program are not made generally available to the public.

(2) The benefits and limitations of the travel business discount program are clearly and conspicuously disclosed to the purchaser, in writing, before any consideration is paid by the purchaser.

(3) The sale is made only to a purchaser who is any of the following:

(A) A duly registered seller of travel.

(B) An owner or principal of a seller of travel listed on the seller of travel’s registration form.

(C) An employee of a seller of travel who was paid at least five thousand dollars (\$5,000) in compensation in the prior 12 months by that seller of travel.

(D) A person described in subdivision (g) of Section 17550.20 who is listed on a seller of travel’s registration form and who was paid at least five thousand dollars (\$5,000) in compensation in the prior 12 months by that seller of travel.

(c) A seller of a travel business discount program shall maintain records in this state establishing that each purchaser satisfies one of the criteria described in paragraph (3) of subdivision (b) and shall produce those records for inspection and copying without charge at an office of the Attorney General

1 *within 10 calendar days of a written request by the Attorney*  
2 *General.*

3 *(d) A seller of a travel business discount program shall comply*  
4 *with the requirements for discount buying services pursuant to*  
5 *Title 2.6 (commencing with Section 1812.100) of Part 4 of*  
6 *Division 3 of the Civil Code.*

7 *SEC. 8. Section 17550.27 is added to the Business and*  
8 *Professions Code, to read:*

9 *17550.27. (a) For the purposes of this section, the following*  
10 *terms shall have the following meanings:*

11 *(1) "Seller of travel discount program" means a membership,*  
12 *benefit program, or other arrangement that purports to entitle*  
13 *the purchaser of the seller of travel discount program to future*  
14 *transportation or any travel services at a discount or reduced*  
15 *price or preferential treatment not made generally available to*  
16 *the public. Seller of travel discount program does not include a*  
17 *"travel business discount program" as defined in Section*  
18 *17550.26.*

19 *(2) "Seller" means any person who sells or offers for sale a*  
20 *seller of travel discount program but does not include any of the*  
21 *following:*

22 *(A) Any person excluded from the definition of "seller of*  
23 *travel" under subdivision (b) of Section 17550.1.*

24 *(B) An owner, developer, or operator of a time-share interest*  
25 *or time-share plan as described in subdivisions (x) and (z) of*  
26 *Section 11212 in connection with an offer as described in*  
27 *subdivision (o) of Section 11212 that complies with the Vacation*  
28 *Ownership and Time-Share Act of 2004 providing lodging at a*  
29 *time-share unit, including arranging transportation to the*  
30 *time-share unit.*

31 *(C) An exchange company as described in subdivision (k) of*  
32 *Section 11212 in connection with arranging lodging at a*  
33 *time-share unit, including arranging transportation to the*  
34 *time-share unit.*

35 *(D) A motor club subject to Part 5 (commencing with Section*  
36 *12140) of Division 2 of the Insurance Code.*

37 *(E) A nonprofit organization described in Section 501(c)(3) of*  
38 *the Internal Revenue Code that, according to a final ruling or*  
39 *determination by the Internal Revenue Service, is both exempt*  
40 *from taxation under Section 501(a) of the Internal Revenue Code*

1 *and not a private foundation as defined in Section 509 of the*  
2 *Internal Revenue Code. An advance ruling or determination of*  
3 *tax exempt or foundation status by the Internal Revenue Service*  
4 *does not meet the requirements of this paragraph.*

5 *(F) An entity or a wholly owned subsidiary of an entity that*  
6 *maintains a tangible net equity exceeding five million dollars*  
7 *(\$5,000,000) as reflected in an audited financial statement,*  
8 *prepared in accordance with generally accepted accounting*  
9 *principles, for the entity's most recent fiscal year.*

10 *(b) A seller may sell a seller of travel discount program if the*  
11 *following conditions are satisfied:*

12 *(1) The seller is a duly registered seller of travel.*

13 *(2) The annual charge for the seller of travel discount*  
14 *program does not exceed one hundred fifty dollars (\$150).*

15 *(3) The term of the seller of travel discount program does not*  
16 *exceed one year. The purchaser may renew participation in the*  
17 *program at the end of each term for a period not to exceed one*  
18 *year by affirmatively providing the seller with a written express*  
19 *request to renew. The seller may not seek or accept the*  
20 *purchaser's authorization for an automatic renewal or the*  
21 *purchaser's renewal request more than 60 days before the*  
22 *expiration of an annual term or more than 15 days before the*  
23 *expiration of a shorter term program.*

24 *(4) The represented discounts or reduced prices offered under*  
25 *the seller of travel discount program are not made generally*  
26 *available to the public.*

27 *(5) The purchaser has the right to cancel the purchaser's*  
28 *participation in the seller of travel discount program and receive*  
29 *a full refund of all consideration paid for the pending term of the*  
30 *program at either of the following times:*

31 *(A) Within five business days of purchasing or renewing the*  
32 *seller of travel discount program or receiving the disclosure*  
33 *required by paragraph (6), whichever is later.*

34 *(B) At any time based on the seller's misrepresentation or*  
35 *violation of this article.*

36 *(6) The benefits and limitations of the seller of travel discount*  
37 *program and the purchaser's cancellation rights described in*  
38 *paragraph (5) are clearly and conspicuously disclosed, in*  
39 *writing, before any consideration is paid by the purchaser.*

1 (7) *The discounted or reduced price for any tour package,*  
2 *including transportation or any travel services, offered under the*  
3 *seller of travel discount program shall be at least 5 percent*  
4 *below the price that would have been paid by a purchaser*  
5 *without participation in the seller of travel discount program.*

6 (8) *The seller may not offer to arrange transportation or any*  
7 *travel services for a specified price, time, or location unless the*  
8 *seller has written evidence of the commitment of the provider of*  
9 *transportation, lodging, or any travel services to provide those*  
10 *services at the price, time, and location specified.*

11 (9) *The seller shall maintain a surety bond of one hundred*  
12 *thousand dollars (\$100,000) issued by a surety company*  
13 *admitted to do business in this state. A copy of the bond shall be*  
14 *filed with the Secretary of State, with a copy provided to the*  
15 *Attorney General. The bond shall be in favor of the State of*  
16 *California for the benefit of purchasers of the seller of travel*  
17 *discount program harmed by a violation of this section, the*  
18 *seller's misrepresentation or misapplication of funds, or the*  
19 *failure of the seller to comply with the terms of the seller of travel*  
20 *discount program.*

21 (10) *The seller shall comply with the requirements for*  
22 *discount buying services pursuant to Title 2.6 (commencing with*  
23 *Section 1812.100) of Part 4 of Division 3 of the Civil Code.*

24 ~~SEC. 8.~~

25 SEC. 9. Section 17550.37 of the Business and Professions  
26 Code is amended to read:

27 17550.37. (a) "Person aggrieved," as used in this article,  
28 means a passenger, as defined in Section 17550.3, located in  
29 California at the time of sale, or a person located in California at  
30 the time of sale who made any payment on behalf of the  
31 passenger for air or sea transportation or travel services, who has  
32 sustained a loss as a result of the failure of a seller of travel to  
33 refund payments made by or on behalf of a passenger as payment  
34 for air or sea transportation or travel services, where a refund is  
35 due as a result of the bankruptcy, insolvency, cessation of  
36 operations, or material failure to provide the transportation or  
37 travel services purchased by the passenger, regardless of whether  
38 the passenger or a person making payment on behalf of the  
39 passenger initially contracted with that seller of travel. "Loss," as  
40 used herein, shall be limited to losses that are incurred in a

1 transaction with a seller of travel who, at the time of sale, was a  
2 paid-up participant in the Travel Consumer Restitution Fund and  
3 was registered pursuant to Section 17550.20. “Person aggrieved”  
4 shall not mean or include a passenger, or person making payment  
5 on behalf of a passenger, in a transaction where the air or sea  
6 transportation or travel services are furnished by a business entity  
7 that is located and providing transportation or travel services  
8 outside of the United States and is not in compliance with Article  
9 2.6 (commencing with Section 17550).

10 (b) Any person aggrieved who files a claim for payment from  
11 the Travel Consumer Restitution Fund thereby waives his or her  
12 right to bring any action at law or equity that is against the seller  
13 of travel as to whom the claim is made and arises from the  
14 transaction that is the subject of the claim against the restitution  
15 fund. The claim form required by Section 17550.46 shall include  
16 a clear and conspicuous notice of the waiver.

17 (c) The waiver of rights provided for by subdivision (b) shall  
18 not apply to any claimant whose claim is denied on any of the  
19 following grounds, as set forth in the statement of decision  
20 required by subdivision (d) of Section 17550.47:

21 (1) The seller of travel was not, at the time of sale, a paid-up  
22 participant in the Travel Consumer Restitution Fund, as required  
23 by subdivision (a).

24 (2) The seller of travel was not, at the time of sale, registered  
25 pursuant to Section 17550.20.

26 (3) The claimant was not located in California at the time of  
27 sale, as required by subdivision (a).

28 ~~SEC. 9.~~

29 *SEC. 10.* Section 17550.38 of the Business and Professions  
30 Code is amended to read:

31 17550.38. (a) It is the purpose of the Travel Consumer  
32 Restitution Corporation to provide restitution to a person  
33 aggrieved, subject to the limitations set forth in this article. The  
34 restitution is secondary only to any relief, compensation, or  
35 reimbursement to which a person aggrieved may be entitled  
36 under any of the following:

37 (1) A Consumer Protection Deposit Plan, as described in  
38 subdivision (b) of Section 17550.16.

39 (2) A Consumer Protection Escrow Plan, as described in  
40 subdivision (c) of Section 17550.16.

1 (3) Travel insurance.

2 (4) The successful assertion by the person aggrieved of that  
3 person's rights under Section 1747.50 or 1747.90 of the Civil  
4 Code or under Section 226.12 or 226.13 of Title 12 of the Code  
5 of Federal Regulations.

6 (b) Nothing in this section shall be construed to require a  
7 person aggrieved to bring a civil action to obtain any relief,  
8 compensation, or reimbursement or to file a crime report with  
9 law enforcement in order to obtain payment from the restitution  
10 fund.

11 (c) The restitution shall be paid from the Travel Consumer  
12 Restitution Fund established by the Travel Consumer Restitution  
13 Corporation.

14 (d) The Travel Consumer Restitution Corporation may request  
15 legal counsel, representation, and advice from the office of the  
16 Attorney General.

17 ~~SEC. 10.~~

18 *SEC. 11.* No reimbursement is required by this act pursuant to  
19 Section 6 of Article XIII B of the California Constitution because  
20 the only costs that may be incurred by a local agency or school  
21 district will be incurred because this act creates a new crime or  
22 infraction, eliminates a crime or infraction, or changes the  
23 penalty for a crime or infraction, within the meaning of Section  
24 17556 of the Government Code, or changes the definition of a  
25 crime within the meaning of Section 6 of Article XIII B of the  
26 California Constitution.